

PARTICIPANT AGREEMENT

BASIC ELEMENTS

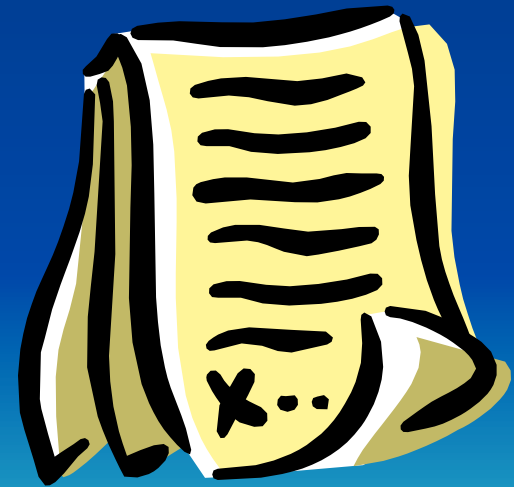
- Title
- Identification of the parties
- Description of activities & risks
- Acknowledgment and assumption of inherent & other risks
- Release, indemnity and agreement not to sue
- Other (e.g. law, venue, severability, full. ext.)
- Signature

HOW DOES AGREEMENT PROVIDE PROTECTION?

- Can RELIEVE provider of duty of reasonable care – summary judgment
- Can STRENGTHEN chance for dismissal– Inherent Risk Doctrine*
- Can REDUCE ultimate liability – comparative ‘fault’ of provider and participant

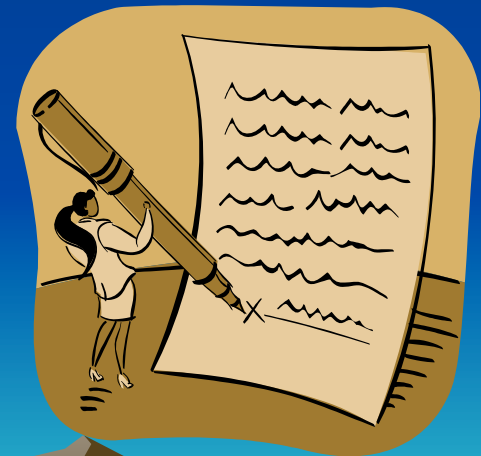
WHAT IT CAN'T DO

- Agreement can't (in most states) eliminate liability for:
 - Gross negligence, reckless, intentional or criminal misconduct
 - Violation of some laws (i.e. CPA, ADA?)
 - Strict liability



ENFORCEABILITY – STEP 1

- Elements of an Enforceable Contract
 - Mutual ‘assent’ or agreement – a ‘meeting of the minds’ (no coercion)
 - **Consideration**
 - Competency
 - Contract ‘purpose’ not prohibited by law



ENFORCEABILITY – STEP 2

- Document containing “exculpatory language”
 - Strict construction
 - Review case by case
 - Not a sure bet
 - Generally, it must be:
 - Fairly and voluntarily entered into
 - Clear & Unambiguous (format, content)
 - **No violation of public policy**



TIPS/ISSUES

- Consult with attorney. Why?
- Esign laws (**Step 3**)
- Different words used – meaning
- Statutes create unreleaseable duty
- Statutes require language in document (inherent risk laws)



TIPS/ISSUES



- **Minors and a written agreement:**
 - Competency to contract (disaffirm/ratify)
 - Ability to assume risks – signed agreement as evidence and ‘informational’ value
 - Parent:
 - release of claims on child’s behalf (a few states)
 - release of parent/s’ claims & agreement of indemnity

TIPS/ISSUES



- State prohibition (e.g. Montana, Virginia)
- Federal prohibition: VAR
- ‘In house’ issues – contradictions, admin....

TIPS/ISSUES

- Form 'manipulation' by participant/parent
- Oral 'dismissal' by staff
- Foreign language speakers
- College/school

TIPS/ISSUES



- Cut and paste?
- Considerations of content and length
- One or more documents?
- Consistency with all materials!
- Form presentation (duress argument)

PARTING SHOTS

- Not a: “This is all I need!”
- Not a negative; view as a positive
- No substitute for running a professional operation
- Not a sure bet, but worth it



Case Law - Trends

Recent cases of interest.



CONTACT INFORMATION

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